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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,923	04/21/2004	Jose Castillo Deniega	IFLOW.063C3	5645

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EXAMINER	
MACNEILL, ELIZABETH	

ART UNIT	PAPER NUMBER
3767	

NOTIFICATION DATE	DELIVERY MODE
11/20/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/828,923	DENIEGA ET AL.	
	Examiner	Art Unit	
	ELIZABETH R. MACNEILL	3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 November 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 9-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 9-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1, 2, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang (US 5,425,723) in view of Tremulis (US 6,102,903).

Wang teaches an elongated non-porous tube having a uniform diameter with an infusion section (18) and connectable to a supply of liquid (via 30) outside of the patient and an inner member (38) with a plurality of exit holes for evenly distributing fluid before it exits the tube. Wang does not teach that the inner member is porous or becomes "saturated."

Tremulis teaches that it is known in the art that a tube with a plurality of small holes is an equivalent of a porous tube. " Usually, a plurality of infusion ports will be distributed over the catheter body in a predesignated pattern, more usually the ports will be longitudinally and circumferentially spaced from each other about the catheter body. The number of ports and the spacing between adjacent ports will, of course, depend on a variety of factors, such as the function of the delivery catheter, the type and quantity of fluid being delivered, the size of the restriction or blockage, etc. For example, the catheter may have from 1 to 100 ports, usually from 3 to 30 ports, and the ports may be formed on only one side of the catheter body to specifically direct

fluid towards one side of a fluid vessel. Alternatively, the catheter may have a multitude of tiny perforations (i.e., greater than 100) or the catheter may have a portion constructed of a porous material." Bottom of Col 4 to top of Col 5.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a porous inner tube instead of an inner tube with a plurality of holes since it has been held that simple substitution of one equivalent for another is within the skill of an ordinary worker in the art.

2. Claims 3, 5, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang/Tremulis in view of Burns (US 5,032,113).

Wang/Tremulis discloses the catheter as above, but do not disclose that the porous member is not concentric with the outer tube or a ring shaped bond at the middle portion of the infusion section. Burns discloses a catheter with inner (18) and outer (12) tubes wherein the outer tube and inner tube are not concentric (Fig 11 or Fig 13). Burns further discloses a middle bond (40, Fig 4B). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the tubes nonconcentric as a matter of obvious design choice.

3. Claims 4,6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang/Tremulis as applied to claim 1 above, and further in view of Abiuso (US 5,213,576).

Wang/Tremulis teaches the catheter as above but does not specify the pore size or ring shaped bonds at the proximal and distal ends of the infusion section.

Abiuso teaches an infusion catheter with porous insert (40) with pores of 15-30 microns and two ring shaped bonds (31 and 35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select a pore size of 15-30 microns and bond the porous member to the tube in because it would be expected to evenly distribute medicament and prevent leakages from the ends of the infusion section.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wang/Tremulis in view of Reynolds (US 5,370,610).

Wang/Tremulis discloses the invention as above but fail to teach an air filter in the flow path of the catheter. Reynolds discloses a catheter with an air filter in the flow path of a catheter (64). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an air filter in order to prevent bacteria from entering the body.

Response to Arguments

Applicant's arguments with respect to claims 1-7, 9 and 10 have been considered but are not persuasive. Applicant has argued that proposed modification of Wang to include a porous tube (since porous tubes and micro machined holes are equivalents as taught by Tremulis) would change the mode of operation of Wang. Tremulis recognizes that a specific spacing of holes is equivalent to the use of a saturated microporous tube (Bottom of Col 4 to top of Col 5). Since these two modes of operation

are known substitutes in the art, it would have been obvious to modify Wang to include a porous tube. The rejection is maintained.

Conclusion

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH R. MACNEILL whose telephone number is (571)272-9970. The examiner can normally be reached on 9:00-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth R MacNeill/
Examiner, Art Unit 3767
/Kevin C. Sirmons/
Supervisory Patent Examiner, Art Unit 3767